



Office of the Attorney General

State of Texas

April 5, 1993

DAN MORALES

ATTORNEY GENERAL

Mr. W. Roger Wilson
Matthews & Branscomb, P.C.
One Alamo Center
106 St. Mary's Street
San Antonio, Texas 78205-3692

OR93-163

Dear Mr. Wilson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18719.

The City Public Service Board of San Antonio (the "board"), which you represent, has received a request for information relating to a controversy involving the easement rights for an electric distribution and transmission line. Specifically, the requestor seeks copies of all public records regarding two lots located within the City of San Antonio. You advise us that some of the requested information has been made available to the requestor. You claim, however, that the remaining documents, which you have submitted to us for review, are excepted from required public disclosure by sections 3(a)(3), 3(a)(7), and 3(a)(11) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

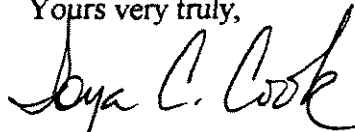
Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. Section 3(a)(3) is

properly invoked where an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming. *Id.*

You advise us that in 1990 you received a letter in which litigation was threatened in the event certain concessions were not granted. You further advise us that negotiations in an attempt to resolve the controversy have not succeeded and that your proposed concessions have apparently been rejected. Recently, you have received at least two letters which include threats of litigation for failure to comply with the opposing party's demands. On the basis of these letters, we agree that the board may reasonably anticipate litigation with respect to this matter. Having examined the documents submitted to us for review, we also agree with your determination that the requested information relates to the anticipated litigation and may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the other claimed exceptions at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-163.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Opinion Committee

TCC/GCK/mc

Ref.: ID# 18719
ID# 18899
ID# 18908
ID# 19032

cc: Ms. Michelle L. Lanfear
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